



Virginia Department of
Behavioral Health &
Developmental Services

Initial Assessment and Case Management

Eight Steps to Initiate the Restoration Process

1. Setting up a referral process at your CSB
2. Receiving and reviewing the court order for restoration services
3. Collecting information to best structure and inform your service delivery
4. Obtaining/reviewing the initial Competency to Stand Trial (CST) report
5. Finding the defendant and making plans for first contact/visit
6. Conducting the first interview with the defendant
7. Documenting your contact and services with the defendant
8. Identifying and addressing possible barriers to O-P restoration services



STEP 1: SETTING UP A REFERRAL PROCESS AT YOUR CSB

- Our CSB received a restoration adult O-P order so how do we get started?
- What should the adult CSB O-P Restoration Coordinator do?
- What should the Restoration Counselor do (if they are different people)?

STEP 1: SETTING UP A REFERRAL PROCESS AT YOUR CSB

- The CSB should identify an adult O-P restoration coordinator and make arrangements to notify their identified O-P restoration coordinator immediately upon receipt of a restoration court order pursuant to § 19.2-169.2.
- Is the adult O-P restoration coordinator clearly identified at your CSB?
- Who is likely to first receive a court order in the mail or by fax? Do they know who the adult O-P restoration coordinator is? Will they date stamp the court order?
- Does the person receiving court orders know how to distinguish a restoration court order pursuant to § 19.2-169.2 in order to forward it to the adult O-P restoration coordinator?
- Does your CSB have multiple sites where a court order might be received?



STEP 2: RECEIVING AND REVIEWING THE COURT ORDER

ORDER FOR TREATMENT OF INCOMPETENT DEFENDANT

Commonwealth of Virginia VA. CODE §§ 19.2-169.2, 19.2-169.3

Case No.

COURT NAME AND ADDRESS

Commonwealth of Virginia v.

The Court having found, pursuant to Virginia Code § 19.2-169.1(E), that the Defendant is incompetent to stand trial, and having found further, based on the attached report or other evidence, that the Defendant can be treated to restore his or her competency

☐ on an outpatient basis in jail or through a local mental health facility

☐ solely on an inpatient basis in a hospital

the Court therefore ORDERS

☐

NAME OF OUTPATIENT THERAPIST OR FACILITY

☐ qualified staff at a hospital to be designated by the Commissioner of Behavioral Health and Developmental Services or his or her designee

to treat the Defendant in an effort to restore him to competency.

If, at any time after treatment commences, the director of the community services board or behavioral health authority or his designee or the director of the treating inpatient facility or his designee believes the defendant's competency is restored, the director or his designee shall immediately send a report to the court concerning (1) the defendant's capacity to understand the proceedings against him and (2) the defendant's ability to assist his attorney.

If, at any time after treatment commences, the director of the community services board or behavioral health authority or his designee or the director of the treating inpatient facility or his designee concludes that the defendant is likely to remain incompetent for the foreseeable future, he shall send a report to the court so stating and indicating whether, in the board, authority, or inpatient facility director's or his designee's opinion, the defendant should be (1) released from state custody, (2) committed pursuant to Virginia Code § 37.2-814 et seq., or (3) certified pursuant to § 37.2-806 in the event he is found to be unrestorably incompetent.

☐ *Defendant charged with a misdemeanor crime enumerated in Virginia Code § 19.2-169.3(C). If the defendant has not been restored to competency after forty-five (45) days from the date of commencement of treatment, the director of the community services board or behavioral health authority, or the director of the treating inpatient facility, or any of their designees, shall send a report indicating the defendant's status to the court. The report shall also indicate whether the defendant should be released or committed pursuant to § 37.2-817 or certified pursuant to § 37.2-806.*

If the defendant has not been restored to competency by six (6) months from the date of the commencement of treatment, the board, authority, or inpatient facility director or his designee shall send a report to the court so stating and indicating whether, in the director's opinion, the defendant remains restorable to competency or whether the defendant should be (1) released from state custody, (2) committed pursuant to Virginia Code § 37.2-814 et seq., or (3) certified pursuant to Virginia Code § 37.2-806 in the event he is found to be unrestorably incompetent.

DATE

JUDGE

WARNING TO DEFENDANT: PURSUANT TO § 18.2-308.1.3, YOU SHALL NOT PURCHASE, POSSESS, OR TRANSPORT A FIREARM UNLESS AND UNTIL YOU ARE RELEASED FROM TREATMENT AND OBTAIN A COURT ORDER RESTORING YOUR RIGHT TO DO SO.

FORM DC-345 MASTER 07/09

Know how to identify the model adult out-patient restoration court order.

Note: Not all restoration orders look like this example, see next slide for a different version of a restoration order.



STEP 2: RECEIVING AND REVIEWING THE COURT ORDER

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF MARTINSVILLE

COMMONWEALTH OF VIRGINIA

Vs. CASE NOS. 1

RECEIVED
JUL 01 2015
DBHDS
Office of Forensic Services

ORDER FOR INPATIENT HOSPITALIZATION

THIS DAY came the Defendant, by counsel, and requested an order for inpatient hospitalization for the defendant pursuant to §19.2-169.2(A) on the following grounds:

1. The defendant, , is charged with unlawfully and feloniously taking, stealing and carrying away personal property valued at over \$200 pursuant to §18.2-95 and felony possession of more than one-half ounce but less than five pounds of marijuana with the intent to distribute pursuant to §18.2-248.1 (a)(2); and
2. A psychological evaluation addressing the defendant's competency to stand trial was performed by , Psy.D, who concludes that the defendant is incompetent to stand trial.

A hearing was conducted by this court on June 26, 2015, with the defendant, defense counsel, and counsel for the Commonwealth present, and the Court finds that the defendant is incompetent to stand trial and requires inpatient hospitalization.

NOTY FIRST
AL CIRCUIT
VIRGINIA

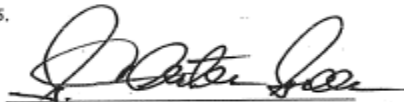
RECEIVED
JUL 2015
COMMISSIONER'S
OFFICE

THEREFORE, it is ORDERED that the defendant, , receive treatment to restore his competency, pursuant to §19.2-169.2(A) of the Code of Virginia, and it is hereby ORDERED that : be and is hereby committed to the custody of the Commissioner of the Department of Behavioral Health and Developmental Services.

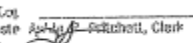

It is further ORDERED that when the director of the treatment facility determines the defendant's competency is restored, the director shall immediately send a report to the Court as prescribed in Subsection D of §19.2-169.1. The Court shall then make a ruling on the defendant's competency according to the procedures specified in Subsection E of §19.2-169.1.

It is ORDERED that the defendant remains under the jurisdiction of the Court and shall not be released from custody and inpatient hospitalization without further order of this Court.

ENTER: This 26th day of June, 2015.


Judge

Endorsement of Counsel is dispensed with – Rule 1:13

A Cor
Teste , Clerk
By. , Deputy Clerk

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AL CIRCUIT
VIRGINIA



STEP 2: RECEIVING AND REVIEWING THE COURT ORDER

Once the CSB O-P Restoration Coordinator has received the order, they should implement the following:

- Examine the court order
- Review or obtain the CST evaluation and review or obtain information about charge(s)
- Identify the names of the judge, DA and CWA
- Determine the location of the defendant

STEP 2: RECEIVING AND REVIEWING THE COURT ORDER - Accuracy?

- Is it an outpatient order (vs. an inpatient order)?
- Is it pursuant to § 19.2-169.2, the correct adult code and **not** 16.1-357, the juvenile restoration code?
- Note: A juvenile can be ordered under 19.2-169.2 if the juvenile has been certified to circuit court.

STEP 2: RECEIVING AND REVIEWING THE COURT ORDER – Expiration?

- When does the court order expire?
- If not noted on the order, look up the defendant on the Court website to determine the next hearing.
<http://www.courts.state.va.us/>
- Note the signed date of the Court order and remember that the court order is valid for up to six (6) months from the date that the defendant is “admitted to the treating facility” (meaning the CSB).
- The 6 month time limit is applicable to defendants with other charges, including most misdemeanors unless the court order says otherwise.



STEP 2: RECEIVING AND REVIEWING THE COURT ORDER: Charges

- Charges can usually be found on the Virginia Judicial System website at <http://www.courts.state.va.us/>
- Most Circuit and General District courts participate in this website, but not J&DR Court



STEP 2: RECEIVING AND REVIEWING THE COURT ORDER – Targeted misdemeanor charges – different expiration date

- Note that there are forty-five (45) day limits placed on restoration orders for certain misdemeanor charges:
 - Trespassing
 - Petit Larceny
 - Disorderly Conduct
- There is a separate box on the court order for these qualifying charges. Look for the box on the court order. NOTE: Courts have been known to apply the 45 day limit to other charges as well.



STEP 3: COLLECTING RELEVANT INFORMATION: RELATED TO CHARGE(S)

- The minimum information about the charge(s) may not be sent with the restoration court order and it may be necessary to collect the information related to charges. The minimum information about charge(s) is:
 - Charges/arrest warrant(s) or
 - Indictment
- The restoration counselor can determine the extent of additional records needed once restoration services have been initiated. Examples include:
 - Police report
 - Criminal complaint
 - Witness/victim statements



STEP 3: HOW DOES THE RESTORATION COUNSELOR OBTAIN INFORMATION ABOUT THE CHARGES?

- The Code says that the defense attorney is responsible to provide relevant information to the CSB within 96 hours of issuance of the restoration order.
- Have defendant's name and case number available when you call.
- In the event that the defense attorney has not responded, contact the clerk of the court and request the information, including the arrest warrant/indictment and CST evaluation.
- If the lack of information persists, write to the judge and copy the Commonwealth Attorney and Defense Attorney and explain the problem.



STEP 4: OBTAINING AND REVIEWING THE CST EVALUATION

- Do not start restoration services without a copy of CST evaluation.
- Provide Restoration Counselor (RC) with a copy of the CST evaluation.
- The CST evaluation will assist the restoration counselor in a number of ways:
 - Background information about the defendant
 - Information about the charges
 - Prior psychiatric problems and possibly long-standing cognitive limitations
- It should also provide a description of the defendant's areas of impairment:
 - Specific deficit(s) that precludes this defendant from being competent, e.g., psychosis, delusional disorder, intellectual disability, or organic brain impairment.
 - Recommendation for interventions that will possibly assist the restoration process



STEP 5: LOCATING THE DEFENDANT AND OTHER KEY PLAYERS

- The defense attorney should tell you the location of the defendant, who could be in jail, home, group living situation, etc.
- Depending on the defendant's location, discuss issues of safety with the restoration counselor if restoration will occur outside the CSB office.
- It is also important to get the contact information for the judge, defense attorney and assigned Commonwealth Attorney.

STEP 5: LOCATING THE DEFENDANT AND OTHER KEY PLAYERS

- If incarcerated, can the defendant be transported to the office?
- If not able to be transported to the office, inquire about the jail's visiting hours/way to reserve a contact visitation room with table.
- If on bond, where do they live and phone #? Who is the contact person?
- Are they able to come to the CSB or are other arrangements necessary?
- Regardless of the defendant's location, schedule a time and meet. Try to arrange a setting conducive to learning.

Step 6: CONDUCTING THE FIRST INTERVIEW WITH THE DEFENDANT

- Explain your involvement to the defendant (informed consent). Consent is not required but useful clinically.
- Establish rapport with the defendant.
- Use your clinical skills just as you would in any treatment setting.
- Initiate the mental status assessment, always paying attention to signs that might indicate need for additional psychiatric care.
- On-going assessment of mental status will determine if O-P restoration continues to be appropriate.

STEP 6: CONDUCTING INITIAL INTERVIEW WITH DEFENDANT

- To prepare for the initial interview, determine if psychosocial history points to signs/symptoms of behavioral health or developmental issues
- Gather a baseline of the defendant's current level of factual and rational understanding of court-related issues and compare it to information reported in original CST evaluation
- Generate hypotheses about the source of the defendant's competency deficits and test those hypotheses during the interview
- Have the defendant sign appropriate releases of information to obtain prior treatment records, if needed
- Begin the formulation of the restoration plan
- **Document each session with the defendant**



STEP 6: CONDUCTING INITIAL INTERVIEW WITH DEFENDANT

- During the first meeting, a pretest may be appropriate to verify current deficit(s) or problem area(s).
- A pretest is provided on page 11 of the DBHDS Training Manual for Community-Based Adult Restoration Services, located on the DBHDS website: <http://www.dbhds.virginia.gov/professionals-and-service-providers/forensic-services>
- Some defendants may have other special needs like an interpreter for sign or other languages and this will have to be arranged.
- Determine if you need more MH history, current medications, family input and/or other service provider information.

STEP 6: CONDUCTING INITIAL INTERVIEW WITH DEFENDANT

- Begin the evaluation of the defendant's mental status and continue mental status evaluation throughout process.
- Does the defendant need psychiatric care? Is it available? Can the CSB provide psychiatric services and/or arrange for a psychiatric consult with the jail staff?
- Is the defendant on medications? If not, can medication be provided or arranged?
- Can the defendant be stabilized on medication in the jail or in the community?
- If the defendant is unstable, do their symptoms indicate that inpatient services are needed, do they meet the "civil" commitment if on bond or § 19.2-169.6 criteria if in jail?



STEP 6: CONDUCTING INITIAL INTERVIEW WITH DEFENDANT

- If there is a question re: defendant's need for inpatient services, meet several times in close succession to form an informed opinion.
- If it is determined that inpatient restoration is necessary, communicate with the court immediately, by calling the clerk's office and writing a letter to the judge and a copy to the attorneys requesting that the order be changed from outpatient to inpatient. See sample letter #5 in your binder, located in tab 3.
- Do not refer defendants for inpatient services unless they need an inpatient setting. In other words, defendants can be challenging, argumentative, sullen, etc. but that does not mean that they need inpatient services.
- Is there any question that they could be malingering?

STEP 6: CONDUCTING INITIAL INTERVIEW WITH DEFENDANT

- Defendant should provide informed consent; however, restoration is court-ordered so restoration services continue regardless of informed consent.
- Progress notes – Use agency progress note system to document contacts.
- Exclusions to the record keeping:
 - Do NOT repeat any statements, either orally or in records, from the defendant about the alleged offense(s).
 - Do NOT indicate, orally or in writing, whether the defendant admits guilt, or how the defendant intends to plead.
- Confidentiality: The normal state and ethical reporting requirements (e.g., duty to warn, alleged sexual abuse, etc.) still apply to the restoration counselor
- Opening a CSB record?

“INFORMED CONSENT”/ “INFORMED ASSENT”

- Services are being provided under court order as the judge has found the individual incompetent to stand trial
- Restoration Counselor is neutral – not working for the prosecutor nor working for the defense attorney
- Usual “doctor/patient” relationship will not exist as restoration counselor will be required to submit report to Court summarizing progress in treatment. There is limited confidentiality, however....
 - Can’t include any statements from defendant about the offense and his/her guilt
 - Can’t be used in the prosecution of defendant
- Report will be sent to judge with copies to Commonwealth Attorney and defense attorney
- Other limits of confidentiality (i.e. child abuse, elder abuse, threats of harm)
- May be subpoenaed to testify about progress in treatment but can’t be asked if defendant admitted to crime or denied crime
- Treatment will consist of weekly meetings and referrals for other behavioral health services as needed.



STEP 7: DOCUMENT YOUR CONTACT AND SERVICES

- The provision of restoration services by the CSB should be documented as you would for any other CSB-provided service.
- Documentation of each session will assist the restoration counselor remember what topics have been covered in previous sessions and what topics need to be covered in future sessions.
- Documentation will also be helpful to the restoration counselor should they be called to testify in court about their services.
- Documentation may assist the defendant should verification of service be required.
- Documentation will promote treatment continuity if behavioral health or intellectual disability services are needed.
- REMINDER: Exclusions to record-keeping:
 - Do not repeat any statements, either orally or in records, from the defendant about the alleged offenses.
 - Do not indicate, orally or in writing, whether the defendant admits guilt, or how the defendant intends to plead.



STEP 7: DOCUMENT YOUR CONTACT AND SERVICES

- All letters will be sent to judge with copies to Commonwealth Attorney and defense attorney with a copy of the outcome CST evaluation.
 - Any conversations conducted with one party should be conveyed to the other party
 - Any impressions you convey to one party should be conveyed to the other party
 - Important to remember that your goal is to restore the defendant if possible; not to treat them for all problems
 - Important to remember when you begin to feel the defendant is unrestorably incompetent or in need of inpatient restoration that this is conveyed immediately to all parties
- Restoration counselor is required to notify court if defendant fails to participate or is not compliant with the restoration recommendations.



STEP 8: BARRIERS TO THE PROVISION OF O-P RESTORATION SERVICES

The only reasons that you should NOT proceed are:

- The defendant clearly needs inpatient restoration services, is actively psychotic, won't take medications, etc.
- The defendant definitely refuses to meet with the restoration counselor after several attempts to engage in the process
- The defendant is unavailable – doesn't show for several appointments and refuses to meet if in jail after several attempts
- The defendant can't be located, either the jail location or the community address
- The defendant moves; no forwarding address in the community
- The defendant is transferred to a jail outside of the CSB jurisdiction



STEP 8: BARRIERS TO THE PROVISION OF O-P RESTORATION SERVICES

- If any of these problems persist, your CSB O-P Coordinator must write to the judge (with copies to the DA & CWA) and explain the problem(s) related to the delivery of services pursuant to the § 19.2-169.2 court order.
- Explain all of the attempts on behalf of the CSB.
- Make recommendations to the court about non-compliance with appointments, refusing to meet, can't be located, etc. Example: contempt of court

OR

- Make recommendations to the court about inpatient restoration services if the defendant is clearly psychotic, refusing meds, and otherwise meets criteria for inpatient services.

NONE OF THESE PROBLEMS?

You are ready to develop a restoration plan and provide restoration services.

